A. THE COURT OF APPEALS' AFFIRMANCE OF THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT WAS APPROPRIATE AND DOES NOT RAISE ANY COMPELLING REASON WARRANTING REVIEW BY THIS COURT.

The decision of the Court of Appeals affirming the dismissal of Petitioners' claims was correct and does not raise any direct conflict in opinions of other Circuits regarding any issue that is material to disposition of this case. "Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). Qualified immunity is only defeated where an official "knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the [plaintiff], or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury." *Id.* at 815. Courts specifically hold that qualified immunity protects all but the plainly incompetent or those who knowingly violate the law. *Malloy v. Briggs*, 475 U.S. 335, 341 (1986). Furthermore, "if reasonable public officials could differ on the lawfulness of defendant's actions, the defendant is entitled to qualified immunity." *Id.*

When considering a qualified immunity defense, the court must first determine whether plaintiff's constitutional rights were violated. *Saucier v. Katz*, 533 U.S. 194, 200 (2001). If the court does find a constitutional violation, it must then determine whether plaintiff's rights were clearly established. *Id.* at 202. However, a public employee

need only show the "objective reasonableness of his conduct" in order to avail himself of the shield of "good faith" immunity and to obtain summary judgment in a civil suit for damages under 42 U.S.C. § 1983 or federal civil rights law. *Harlow v. Fitzgerald*, 457 U.S. at 807.

The Court of Appeals correctly concluded that Petitioner's Complaint should be dismissed on the basis of Respondents' qualified immunity, because Petitioner failed to demonstrate a violation of any clearly established constitutional right. Not only did Petitioner fail to establish a violation of a clearly established constitutional right, but Respondents have demonstrated that the Officers' actions were objectively reasonable.

In accordance with the Police Department's policy, Netelkos called 262-HELP from Petitioner's telephone to request assistance but Petitioner refused to speak to a counselor. Netelkos was told by 262-HELP that they would not be able to get a counselor to the location for several hours. Netelkos was faced with a visibly intoxicated woman, with a prior history of bizarre behavior, sitting alone in a dim room lit only by a candle, quoting from the Bible and listening to extremely loud music, resisting an opportunity to voluntarily seek assistance. At the time of the incident, Petitioner was alone and she had left a meal cooking on the stove on another floor of the house. Under the circumstances, it was objectively reasonable for Netelkos to conclude that Petitioner was in need of psychological evaluation pursuant to the involuntary commitment statute. Netelkos acted in good faith since he felt that he could not, in good conscience, leave Petitioner alone as he believed that she was a danger to herself and to others.

Netelkos radioed for an ambulance immediately prior to Officer Lange's arrival at the scene. Upon his arrival, Lange heard Petitioner screaming upstairs. Lange went upstairs and saw Petitioner sitting in the room with candles burning around her. While Netelkos and Lange waited for the ambulance to arrive for approximately ten minutes, both Officers, as well as neighbors and family members, tried to tell Petitioner to relax, to calm down and that they were both there to help her but Petitioner was extremely agitated, adamantly opposed to going to the hospital and acted in a way that looked like she was going to harm herself. Lange testified that Petitioner did not answer questions that were posed to her and he smelled alcohol emanating from her.

Upon the ambulance's arrival, Netelkos and Lange assisted Petitioner downstairs since they were concerned for her welfare. While the Officers tried to bring Petitioner downstairs, she flailed her arms and tried to hit the Officers. Petitioner also admitted that she tried to flee and "started towards the door." Eyewitnesses also observed her attempt to flee the scene. While attempting to place Petitioner on a stretcher, she cursed, screamed and resisted being placed in the ambulance. The EMS, neighbors and family members were on the scene trying to convince Petitioner that the police were only trying to help her. Although family members and neighbors were present, no one attempted to stop her from being taken to BRMC in an ambulance or even questioned the decision to take her from the scene.

A reasonable police officer faced with the same circumstances as Netelkos would believe that he was acting properly by involuntarily committing Petitioner in accordance with N.J.S.A. 30:4-27.1, *et seq*. Moreover, even if

Netelkos mistakenly concluded that his actions were lawful, he is afforded qualified immunity since he reasonably believed that his actions were lawful. *Ryan*, 674 F. Supp. at 479 (holding that "[e]ven if a public official mistakenly concludes that what he or she is doing is lawful, as long as the official reasonably believes that his or her conduct was lawful, the official should not be held personally liable."). Both Officers believed that they were acting in good faith at the time of this incident and in accordance with the Police Department's policy which requires adherence to New Jersey state law with regard to involuntary commitments. Netelkos decided to involuntarily commit Petitioner to BRMC pursuant to N.J.S.A. 30:4-27.1, *et seq.* because he believed that Plaintiff was dangerous to herself and to others. Netelkos based his decision on several factors, not just her apparent intoxication.

The District Court agreed and found that Netelkos' actions were objectively reasonable based upon Petitioner's behavior. The Court of Appeals, in affirming the District Court, found that "given the circumstances, it was reasonable for Officers Netelkos and Lange to believe that Burr posed an imminent threat of bodily harm, at least to herself, even if the Officers were wrong. Thus, there was no violation of Burr's constitutional rights."

The Court of Appeals acknowledged that "Burr's somewhat bizarre behavior and the smell of alcohol suggested to Netelkos that she would not be safe if left alone." Moreover, the Court of Appeals acknowledged that Burr concedes that Netelkos knew of her from a previous disturbance-of-the-peace complaint, a recent spate of domestic violence between Burr and her sister, and numerous episodes of "eccentric, albeit benign, interaction"

between Burr and law enforcement within the previous five to six month period.

Lab tests determined that Burr's blood alcohol level was .213, well above the legal limit. Burr did not dispute that she had been drinking alcohol, listening to religious music and "singing to God." A doctor at the BRMC prescribed 5 mg. of Haldol, an anti-psychotic used to manage hyperactivity, mania, and agitation and 2 mg. of Ativa, for anxiety. Burr also underwent a psychiatric assessment. The doctor diagnosed alcohol abuse, and probable alcohol-induced mood disorder with manic features.

The Court of Appeals then held that Petitioner was required to show that the law placed Netelkos on notice that his conduct was unlawful. Although not argued below, Petitioner's attempt to now point to the definition section of N.J.S.A. 30:4-27.2 to try and show that Netelkos had the required notice that his conduct was unlawful is misguided. Netelkos' decision to commit Petitioner was based on several factors, not just her apparent intoxication. Those factors included a police officer faced with a visibly intoxicated woman, with a prior history of bizarre behavior, sitting alone in a dim room lit only by a candle, quoting from the Bible and listening to extremely loud music, resisting an opportunity to voluntarily seek assistance. At the time of the incident, Petitioner was alone in the house and had left food on the stove cooking on another floor of the house. Under the circumstances, it was objectively reasonable for Netelkos to conclude that Petitioner was a danger to herself and to others in accordance with N.J.S.A. 30:4-27.1, *et seq*. The District Court and Court of Appeals agreed with Netelkos' assessment of the situation.

Petitioner also argues that this Court should clarify the limits of the "community care taking function" since this petition presents an appropriate record to do so. However, this Petition provides no such record since the Court of Appeals found that the doctrine was not applicable to the instant matter.

Instead, the Court of Appeals, in agreeing with the District Court, held that there was no violation of Petitioner's constitutional rights since under the above-described circumstances "it was reasonable for Officers Netelkos and Lange to believe that Burr posed an imminent threat of bodily harm at least to herself. . . ."

The Court of Appeals ultimately held that Petitioner failed to show that her rights were clearly established. In this regard, the Court of Appeals properly held that Petitioner "failed to cite any law that an officer, responding to a complaint and knowing of recent disturbances, cannot enter a home 'to make sure everything was okay.'" As a result, the Court of Appeals properly affirmed the grant of summary to Respondents based on a proper application of qualified immunity and not the "community care taking function" doctrine.

Petitioner has also failed to demonstrate that the Court of Appeals misapplied the doctrine of qualified immunity. The Court of Appeals appropriately determined that Respondents were entitled to qualified immunity because Petitioner alleged violations of rights that were not "clearly established" at the time the conduct at issue occurred. That decision is correct, and does not warrant this Court's review.

Once again, Petitioner has cited no conflict with a decision of this Court on the issue of qualified immunity.

Nor did Petitioner establish any conflict among the other Circuit Courts of Appeals on these issues. Since Petitioner has failed to meet the standard required to be afforded the privilege of review by this Court by way of granting a Writ of Certiorari, the within Petition should be denied.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that Petitioner's Petition for a Writ of Certiorari be denied.

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